

REMARKS

In response to the Office Action, claims 9, 18 and 19 have been canceled. Such cancellation is without prejudice to further prosecution of these claims in one or more continuing applications.

Claim 6 has been amended to incorporate the language recited in now canceled claim 9. No new matter has been added by the amendments to claim 6. Claims 6 - 8, 13, 16 and 17 remain in the application. Favorable reconsideration is respectfully requested. The following comments address the issues presented in the Office Action in order of their appearance in the Office Action.

Claim Rejections - 35 USC § 103

Claims 6 - 9, 13, 16 and 17 are rejected under 35 USC § 103(a) over the '859 patent to *Brotz* in view of U.S. Patent 3,926,193 to *Hasson*.

In view of the cancellation of claim 9 and the amendment of claim 6 to incorporate claim 9, it is now believed that claim 6 is in condition for allowance. Specifically, and as the Examiner readily admits, *Brotz*:

1. fails to disclose a wound suture device wherein the straps are isolated;
2. fails to disclose a wound suture device with a second strap (because *Brotz* only has arguably one strap, it can only arguably disclose a first strap;
3. fails to disclose a wound suture device wherein the first strap has a proximal end with a male connector;
4. fails to disclose a wound suture device wherein the first or second strap comprises a female connector;
5. fails to disclose or even suggest even the need for a female connector which is a buckle
6. fails to disclose or even suggest the claimed ratcheted male connector end for engaging the female buckle end.

In addition, *Brotz* fails to disclose a wound suture device with a plurality of barbs is present on the ventral surface of the first and second straps.

Thus, the "straps" referred to in *Brotz* are a single unit. In other words, there is no second strap because *Brotz* neither discloses nor suggests the need for a second part to the suture assembly other than the insertion member 18. The suture device of *Brotz*, once constructed, is a single frame for immobilizing the wound tissue. In fact, *Brotz* maintains that its invention is an improvement

over two-part fastening devices. In column 1, lines 51 - 60, *Brotz* discusses drawbacks of the two-part suture devices. Therefore, not only does *Brotz* fail to contemplate a two-part wound suture device having a male connector and a female connector, *Brotz* specifically discouraged its use thereby teaching away from a two-part suture device. Applicant therefore submits that it would be improper to combine references that “teach away” from the invention at hand without any motivation to combine (*M.P.E.P.* § 2145; *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983)).

However, the Examiner attempts to cure the deficiencies in *Brotz* by combining *Brotz* with the 1975 reference to *Hasson* by stating that *Hasson* teaches a surgical device with isolated straps, wherein one strap has a ratcheted male connector and another strap has a female connector buckle to close a wound surface. This attempted combination fails for several reasons.

Any rejection of a claim for obviousness over a combination of prior art references must establish that (1) the combination produces the claimed invention; and (2) the prior art contains a suggestion or motivation to combine the prior art references in such a way as to achieve the claimed invention. *M.P.E.P.* 2145; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438, (Fed. Cir. 1991); and *In re O’Farrell*, 853 F. 2d 894, 903 (Fed. Cir. 1988).

As stated above, *Brotz* is quite simply and specifically directed to a single unit wound closure device and in fact discourages two-part wound closure devices. Further, *Brotz* provides no suggestion for splitting the suture device into two parts and in fact teaches away from the use of the two-part wound suturing device. Therefore, it cannot be seen how *Brotz* could benefit from a male and female connector unless the device of *Brotz* was split into two parts. Thus, the combination of the references does not produce the claimed invention.

Further, *Hasson* specifically recites against the use of a wound suture device wherein any portion of the device penetrates the tissue (column 1, lines 19 - 31 of *Hasson*). Therefore, *Hasson* teaches away from any use of barbs which are required by *Brotz*. Applicant submits that *Hasson* is even less pertinent to the primary reference to *Brotz* because *Brotz* requires a embedded tissue suture device (which *Hasson* specifically teaches against) and because *Hasson* requires a two-part suture device which *Brotz* specifically teaches against.

The Examiner is also combining a patent issued in 1996 (*Brotz*) with a patent issued in 1975 (*Hasson*), a patent more than twenty older than *Brotz*. The fact that two references issued twenty years apart and that nothing in the interim provided a plausible combination should be evidence enough that the two references cannot be combined except only with improper hindsight after

reviewing the claimed invention.

The Examiner responded to applicant's last Amendment by stating that she could use hindsight judgment to combine two references in order to make an obviousness rejection. Specifically, the Examiner stated that "so long as [any judgment on obviousness] takes into account only knowledge which was within the ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." However, as stated above, a reconstruction based on two prior art references is only proper when there is motivation and suggestion provided by the prior art references, neither of which is apparent here. The Examiner is also reminded that she is not allowed pick and choose elements from prior art references in order to "build" an obviousness rejection. Simply finding one reference with "barbs" (*Brotz*) and another reference with "male and female connectors" (*Hasson*) and attempting to combine them without the requisite motivation and suggestion is impermissible hindsight reconstruction (M.P.E.P. § 2145).

Finally, neither of the references disclose or suggest the plurality of barbs on the ventral surface of the distal ends of the first and second straps as presently claimed.

In view of the amendment to claim 6 and the totality of the arguments overcoming the 35 USC § 103(a) rejection, applicant respectfully submits that claims 6 - 8, 13, 16 and 17 are in allowable condition. Withdrawal of the rejection is respectfully requested.

CONCLUSION

Applicant submits that the application is now in condition for allowance. Early notification of such action is earnestly solicited. Should the Examiner have any questions or comments with respect to the application, the Examiner is requested to contact the undersigned attorney. The attorney welcomes and encourages telephone calls related to this application because this may allow the resolution of any disputed claim language and/or other informalities more rapidly and efficiently than by any other means. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

Respectfully submitted,


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